Office - Supreme Court, U. S.
FILED
SEP 18 194
CHARLES ELMORE CROPLEY
CLERK

No. 350

In the Supreme Court of the United States

OCTOBER TERM, 1944

EMPLOYERS GROUP OF MOTOR FREIGHT CARRIERS, INC., ET AL., PETITIONERS

v.

NATIONAL WAR LABOR BOARD ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statutes and regulations involved	2
Statement	2
Argument	4
Conclusion	10
Appendix	11

CITATIONS

Cases:

American School of Magnetic Healing v. *McAnnulty*, 187 U. S. 94	7
Appalachian Electric Power Co. v. *Smith*, 67 F. (2d) 451, certiorari denied, 291 U. S. 674	10
Baltimore Transit Co. v. *Flynn*, 50 F. Supp. 382	7
Boggus Motor Co. v. *Onderdonk*, 9 F. Supp. 950	7
Champlin Rfg. Co. v. *Commission*, 286 U. S. 210	7
Columbia Broadcasting System v. *United States*, 316 U. S. 407	8
Harrisonville v. *Dickey Clay Co.*, 289 U. S. 334	9
Hecht Co. v. *Bowles*, 321 U. S. 321	9
Louisiana v. *McAdoo*, 234 U. S. 627	10
Minnesota v. *Hitchcock*, 185 U. S. 373	10
National War Labor Board v. *Montgomery Ward & Co.*, App. D. C., No. 8732, decided July 19, 1944	7, 9
Oregon v. *Hitchcock*, 202 U. S. 60	10
Pennsylvania v. *Williams*, 294 U. S. 176	9
Pennsylvania Federation v. *Pennsylvania R. R. Co.*, 267 U. S. 203	6
Pennsylvania R. R. Co. v. *Labor Board*, 261 U. S. 72	6
Spielman Motor Sales Co. v. *Dodge*, 295 U. S. 89	7
Standard Computing Scale Co. Ltd. v. *Farrell*, 249 U. S. 571	8
Stark v. *Wickard*, 321 U. S. 288	6
Switchmen's Union v. *Mediation Board*, 320 U. S. 297	6, 9
Transcontinental & Western Air, Inc. v. *Farley*, 71 F. (2d) 288, certiorari denied, 293 U. S. 603	10
United States v. *Los Angeles & S. L. R. Co.*, 273 U. S. 299	6

608649—44——1

Cases—Continued. Page

Utah Fuel Co. v. *National Bituminous Coal Commission*, 306 U. S. 56 7

Virginian Ry. Co. v. *United States*, 272 U. S. 658 9

Waite v. *Macy*, 246 U. S. 606 7

Watson v. *Buck*, 313 U. S. 387 7

Wells v. *Roper*, 246 U. S. 335 10

Worcester County Trust Co. v. *Riley*, 302 U. S. 292 10

Statutes:

Inflation Control Act:

Sec. 1 11

Sec. 5 ..... 5, 11

Sec. 11 11

War Labor Disputes Act of June 25, 1943, Sec. 7 11

Miscellaneous:

Executive Order No. 9017 13

Executive Order No. 9250 ..... 5, 15

Executive Order No. 9328, April 8, 1943 17

Executive Order No. 9370, August 16, 1943 ..... 6, 17

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 350

EMPLOYERS GROUP OF MOTOR FREIGHT CARRIERS, INC., ET. AL., PETITIONERS

v.

NATIONAL WAR LABOR BOARD ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The District Court of the United States for the District of Columbia did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 60–67) is reported at 143 F. (2d) 145.

JURISDICTION

The judgment of the District Court was entered on November 22, 1943 (R. 55). The judgment of the Court of Appeals was entered on June 2, 1944 (R. 68). The petition for a writ of certiorari was filed on August 16, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a "directive order" of the National War Labor Board, issued for the purpose of

resolving a wage dispute between the petitioners and their employees, is reviewable in an injunctive proceeding brought in the federal courts.

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the statutes and regulations involved are set forth in the Appendix, pp. 11–18, *infra.*

STATEMENT

On June 14, 1943, the petitioners filed a complaint in the District Court of the United States for the District of Columbia, seeking to enjoin and annul a "directive order" of the National War Labor Board which was issued in order to adjust a labor dispute between the petitioners and their employees (R. 10–51). The complaint, as amended (R. 52–53), named as respondents, in their individual and official capacities, the Board and its members, the National War Labor Board Trucking Commission and its members; and also named the Administrator of the Office of Price Administration, and the Director of Economic Stabilization.

The material allegations of the complaint may be summarized as follows: The petitioners are motor carriers engaged in the transportation of freight by truck, and a nonprofit corporation representing such carriers (R. 12). In November 1942, a dispute arose between the petitioners and their employees over the wage and hour provisions to be included in a collective bargaining agree-

ment (R. 17). The Conciliation Service of the Department of Labor unsuccessfully attempted to conciliate the dispute (R. 17). Thereafter, on January 22, 1943, the Secretary of Labor certified the dispute to the Board, pursuant to Executive Order No. 9017 under which the Board was established (R. 17; see Appendix, pp. 13–15, *infra*). After a hearing, the Board acting through its agency, the National War Labor Board Trucking Commission, passed upon the merits of the dispute between petitioners and their employees by issuing a "directive order" on April 10, 1943, prescribing a wage increase. This order was approved by the Director of Economic Stabilization on April 30, 1943, after receiving a report from the Price Administrator that the proposed wage increase would probably entail an increase in the petitioners' trucking rates. (R. 18–21, 26–30, 48–51.) The complaint charged, further, that the Board's order (1) violated Executive Order No. 9328 of April 8, 1943, which allegedly modified preexisting standards governing wage increases (see Appendix, p. 17, *infra*); and (2) was "arbitrary and capricious" and "contrary to the evidence" (R. 21). The petitioners also alleged that the Board's order would cause them "irreparable injury," and that it would be "impossible" to "absorb" the proposed wage increase (R. 12, 23).

The respondents moved to dismiss the complaint or, in the alternative, for summary judgment, on the grounds that the court had no jurisdiction over

the subject matter of the action and that the complaint failed to state a claim upon which relief could be granted (R. 53–54). In support of the motion, the respondents filed an affidavit (R. 57–58) by Lloyd K. Garrison (then Executive Director and General Counsel of the Board), stating that the Board had not reported to the Director of Economic Stabilization the petitioners' failure to comply with the Board's order; that the Director had not taken jurisdiction of the matter on his own motion; and that the Director, in a letter to the Board, had disclaimed any authority to invoke sanctions under Executive Order No. 9370 of August 16, 1943, because in the Director's judgment, the Order applied only to Board orders issued pursuant to the War Labor Disputes Act of June 25, 1943, enacted two months after the order involved here. (See Appendix, pp. 17–18, *infra*.)

The District Court dismissed the complaint and granted summary judgment for the respondents (R. 55). On appeal to the Court of Appeals for the District of Columbia, the judgment was affirmed (R. 60–68).

ARGUMENT

While the question presented is important,[1] we believe the decision below is so clearly correct that

[1] It may be noted that the importance of the question is substantially diminished by the fact that it can arise only with respect to orders issued by the Board prior to June 25, 1943, when the War Labor Disputes Act was enacted. See pp. 6–7, *infra*.

further review is not warranted. There is no statute or executive order purporting to authorize judicial review of the Board's orders. The petitioners contend that the federal courts may review such orders under their general equity powers. We submit that both courts below were correct in holding that such a contention is untenable.

1. The Board's order does not alter the legal rights of the parties, or impose legal sanctions of any kind. Failure to observe the wage proposals in the order does not subject the petitioners or anyone else to legal enforcement proceedings or to penalties of any nature. Neither the Inflation Control Act nor Executive Order No. 9250 (see Appendix, pp. 11, 15–16, *infra*) forbids adherence to an old wage scale even after approval of a new wage scale by the Board.[2] The order merely authorizes, but does not compel, the adoption of the proposed wage increase. As the court below properly observed, "no one could maintain either judicial or administrative proceedings against" the petitioners "upon the authority of the Board's order" (R. 62). In such circumstances, the order is a public statement of the

[2] Under Section 5 of the Inflation Control Act, "No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act." The regulations promulgated by the President in Executive Order No. 9250 provide that "No increases in wage rates * * * shall be authorized * * * unless the National War Labor Board has approved such increases * * *." See Appendix, pp. 11, 15, *infra*.

Board's opinion as to how, in view of the paramount national interest created by the war, the dispute between the parties should equitably be resolved. Plainly, therefore, the Board's order contains none of the incidents requisite for judicial review in the federal courts. *United States* v. *Los Angeles & S. L. R. Co.*, 273 U. S. 299; *Pennsylvania R. R. Co.* v. *Labor Board*, 261 U. S. 72; *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 203; *Switchmen's Union* v. *Mediation Board*, 320 U. S. 297; *Stark* v. *Wickard*, 321 U. S. 288.

The record contains no allegation or indication that the respondents have taken or have threatened any action to compel obedience to the order. The Board has not reported or threatened to report the petitioners' noncompliance to the President or to the Director of Economic Stabilization, and the latter has not taken jurisdiction of the matter on his own motion (R. 57). While Executive Order No. 9370 of August 16, 1943, authorizes the Director of Economic Stabilization, when the War Labor Board reports noncompliance with one of its orders, to direct withdrawal of priorities and Government contracts "in order to effectuate compliance," the Director has expressly disclaimed any authority to invoke its sanctions here, on the ground that the Order applies only to Board orders issued pursuant to the War Labor Disputes Act, which was enacted about two months after the present

order was issued (R. 57–58).[3] In the absence of any threat on the part of any respondent to apply sanctions or to take any other step to enforce the Board's order, there is no basis for injunctive relief. *National War Labor Board* v. *Montgomery Ward & Co.*, App. D. C., No. 8732, decided July 19, 1944; *Baltimore Transit Co.* v. *Flynn*, 50 F. Supp. 382 (D. Md.); cf. *Watson* v. *Buck*, 313 U. S. 387, 399–400; *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210, 237–238; *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89; *Boggus Motor Co.* v. *Onderdonk*, 9 F. Supp. 950 (S. D. Tex.).[4]

Whether the petitioners' noncompliance with the Board's order will ever be referred to either

---

[3] The Director's only function in the labor dispute between petitioners and their employees was to approve the wage increases provided for in the Board's directive order, if such increases might require a change in the petitioners' transportation rates; and the only function of the Price Administrator was to consider whether such wage increases would be likely to require a change in the petitioners' transportation rates (see Appendix, pp. 15–16, *infra*). Both of these functions have been executed in the instant case.

[4] The authorities cited by petitioners (Pet. 8–9) do not support their argument. In each case the administrative action sought to be reviewed was, as the court below observed, "directly injurious to legally protected interests of the plaintiff" (R. 61). *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94, involved a suit to obtain mail (including checks, money orders, and cash) which the Post Office Department was withholding from the plaintiff. *Waite* v. *Macy*, 246 U. S. 606, involved a suit to import tea which customs officials were excluding. *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56, con-

the Director of Economic Stabilization or to the President, and whether the President would in such event determine that possession of the petitioners' plants and facilities should be taken by the United States, are matters which at present lie in the realm of speculation. If the Board should report noncompliance to the President, this would be merely "administrative advice" (R. 67), the correctness of which could not be reviewed by the federal courts. *Standard Computing Scale Co. Ltd.* v. *Farrell*, 249 U. S. 571, 574. And if the President should order possession to be taken by the United States of petitioners' business, such action would be taken to prevent a breakdown of essential transportation services which would be harmful to the war effort. Since the petitioners seek relief in this proceeding only against the Board's order (R. 25–26), their fears of a possible exercise by the President of his seizure powers could not be removed even if the order were enjoined or annulled.

2. The Board's order, as an incident in the process of governmental conciliation of labor disputes during the war, represented an effort to adjust by administrative action a controversy threatening to disrupt a function essen-

---

cerned a suit to enjoin disclosure of information alleged to be confidential. *Columbia Broadcasting System* v. *United States*, 316 U. S. 407, not only arose under special statutory provisions for judicial review, but also involved immediate interference with contractual relationships.

tial to the prosecution of the war. The wage increase proposed by the Board was accompanied by a recognition by the Director of Economic Stabilization and the Price Administrator that it might require an increase in the rates chargeable by the petitioners (R. 50–51). The issuance of an injunction in these circumstances may have constituted an abuse of equitable discretion, whatever the scope of judicial review. "A court of equity, which in its discretion may refuse to protect private rights when the exercise of its jurisdiction would be prejudicial to the public interest, * * * would seem bound to stay its hand in the public interest where it reasonably appears that the private right will not suffer." *Pennsylvania* v. *Williams*, 294 U. S. 176, 185; cf. *Hecht Co.* v. *Bowles*, 321 U. S. 321; *Harrisonville* v. *Dickey Clay Co.*, 289 U. S. 334, 338; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 672. The District Court's refusal to review the Board's order is thus consistent with the national policy manifested in the War Labor Disputes Act, whose legislative history, set forth in the opinion of the court below (R. 63–65), shows that Congress plainly did not intend to subject the Board's orders to judicial proceedings, either for enforcement or review. *National War Labor Board* v. *Montgomery Ward & Co.*, App. D. C., No. 8732, decided July 19, 1944; cf.

Switchmen's Union v. *Mediation Board*, 320 U. S. 297, 305.[5]

CONCLUSION

The question presented, while important in the abstract, can arise only as to orders issued prior to June 25, 1943, when the War Labor Disputes Act became law. In view of the clear correctness of the decision below, we believe further review is unnecessary, particularly in the absence of any conflict of authorities. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

FRANCIS M. SHEA,
Assistant Attorney General.

DAVID L. KREEGER,
Special Assistant to the Attorney General.

JOSEPH B. GOLDMAN,
Attorney.

SEPTEMBER 1944.

---

[5] In the court below, the respondents also argued that the petitioners' suit is against the United States, even though it is not named as a formal party. Cf. *Louisiana* v. *McAdoo*, 234 U. S. 627; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 386; *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 297. If this is so, the absence of congressional consent to the present suit deprives the courts of jurisdiction over the subject matter. *Oregon* v. *Hitchcock*, 202 U. S. 60, 69; *Minnesota* v. *Hitchcock*, *supra*; *Wells* v. *Roper*, 246 U. S. 335, 337; *Louisiana* v. *McAdoo*, *supra*; *Transcontinental & Western Air, Inc.* v. *Farley*, 71 F. (2d) 288 (C. C. A. 2), certiorari denied, 293 U. S. 603; *Appalachian Electric Power Co.* v. *Smith*, 67 F. (2d) 451 (C. C. A. 4), certiorari denied, 291 U. S. 674.